
IN THE SUPREME COURT

OF THE

United States

OCTOBER TERM, 1976

No. 76 - 7

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SHASTA

and

HELEN FAYE GENERES,

Real Party in Interest

Petitioner

vs.

TITLE INSURANCE AND TRUST COMPANY, et al.,

Respondent

**ON PETITION FOR A WRIT OF CERTIORARI
to the California Court of Appeal
Third Appellate District**

MEMORANDUM FOR RESPONDENT IN OPPOSITION

JOHN F. FORWARD
433 S. Spring Street
Los Angeles, California 90013

in association with

WELLS AND WINGATE
1290 West Street
Redding, California 96001

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STATEMENT OF THE CASE

This is an action filed by Petitioner seeking to collect a real estate commission allegedly due her. After Respondent had obtained

Page 2

an open extension of time to answer the complaint from the attorney representing Petitioner, the Petitioner discharged that attorney and proceeded to take Respondent's Default Without Notice. Respondent timely moved to set aside the default, which motion was denied by the Honorable Richard B. Eaton, as was a renewal of the Motion, and a Default Judgment was entered against the Respondent. Respondent appealed the decision denying the motion to set aside the default to the Court of Appeals of the State of California, in and for the Third Appellate District, and on December 1, 1975, a remittitur was issued to the Superior Court of Shasta County, State of California, reversing the Order and directing that the Default and Default Judgment against Respondent be set aside. On December 4, 1975, prior to the hearing of further proceedings in the case. Respondent filed a Disqualification of Judge Eaton under California Code of Civil Procedure, Section 170.6, which motion was granted. On December 8, 1975, Petitioner filed a Motion in Opposition to the Disqualification. On December 9, 1975, Judge Eaton, on hearing of said Motion in Opposition to the Disqualification, ruled that his disqualification by Respondent would be disregarded. On or about January 16, 1976, Respondent filed a Petition for Writ of Prohibition with the Court of Appeals for the Third Appellate District and, on April 6, 1976, a Peremptory Writ of Prohibition was issued by said Court prohibiting Judge Eaton from hearing any further matters in connection with this case. On March 31, 1976, Petitioner's Petition for Hearing was denied by the Supreme Court of the State of California.

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The only constitutional or statutory provisions relevant to decision of this case

is 28 U.S.C. §1257(3), which provides that final judgments or decrees rendered by the highest Court of a state, in which a decision could be had may be reviewed by the Supreme Court, "by Writ of Certiorari where the validity of a treaty or of a statute of the United States is drawn in question or when the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties and laws of the United States or where any title, right, privilege or immunity especially set up or claimed under the Constitution, treaties or statutes of or commissions held or authority exercised under the United States".

JURISDICTION

Petitioner asserts that this Court has jurisdiction to review the decisions of the Court of Appeals and of the State Supreme Court granting a Writ of Prohibition, prohibiting Judge Eaton from hearing any further matters connected with this case by virtue of the provisions of 28 U.S.C. §1257(3). Petitioner bases her contention on the grounds that the decisions violated the Fifth and Fourteenth Amendments of the United States Constitution. However, she fails to support this claim with any argument or authority. A general statement that a decision is violative of the Constitutional rights of a party or against the Fourteenth Amendment, or that it is violative of due process, appearing only as a specification of error will not raise a Federal question. Clark vs. McDade, 165 U.S. 168, 17 S.Ct. 284, (1897). Similarly, this Court has previously held that it did not have jurisdiction to review the decision of a State Court where the records failed to disclose that the alleged Federal question was decided by the State Court or that the judgment of the State Court necessarily involved the Federal right and decided it

adversely to the petitioning party. Chesapeake and Ohio Railway Company vs. McDonald, 214 U.S. 191, (1909). Petitioner's claim that her Constitutional rights have been violated by the Court of Appeals and the State Supreme Court is simply an attempt on her part to have well-settled questions of state law reviewed for the third time.

CONCLUSION

As the Petition fails to demonstrate that there is any substantial Federal question involved in this case, the Petition should be dismissed for lack of jurisdiction.

Respectfully submitted,

John F. Forward, II
433 S. Spring St.
Los Angeles, CA 90013

in association with

Wells & Wingate
1290 West St.
Redding, CA 96001

Attorneys for Respondent

By J. M. Wells, Jr.